

MONTANA LEGISLATIVE HISTORY

Chapter 205 19 89

Bill H _____ S 151 Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Mar 14 ☒ C

_____ ☐ C

_____ ☐ C

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Date Out Mar 14 ☒ C

S. Committee on Judiciary

Hearing Date(s) Feb 01 ☒ C

Feb 04 ☒ C

_____ ☐ C

_____ ☐ C

Feb 04 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE FINAL STATUS

2/04 TABLED IN COMMITTEE

SB 151 INTRODUCED BY B. BROWN, LYBECK, ET AL.
INCREASE SENTENCE DEFERRAL PERIOD IF A FINANCIAL
OBLIGATION IS IMPOSED

1/18 INTRODUCED
1/18 REFERRED TO JUDICIARY
2/01 HEARING
2/04 COMMITTEE REPORT-BILL DO PASS
2/06 2ND READING PASS
2/08 3RD READING PASS

TRANSMITTED TO HOUSE
2/27 REFERRED TO JUDICIARY
3/14 HEARING
3/14 COMM REPORT-BILL CONCURRED AS AMENDED
3/16 2ND READING CONCURRED
3/18 3RD READING CONCURRED

RETURNED TO SENATE WITH AMENDMENTS
3/21 2ND READING AMENDMENTS CONCURRED
3/23 3RD READING AMENDMENTS CONCURRED
3/26 SIGNED BY PRESIDENT
3/26 SIGNED BY SPEAKER

3/26 TRANSMITTED TO GOVERNOR
3/29 SIGNED BY GOVERNOR
CHAPTER NUMBER 205 EFFECTIVE DATE: 10/01

SB 152 INTRODUCED BY B. BROWN
PRESUMPTION IN FAVOR OF JOINT CUSTODY EQUAL
RESIDENCY TIME

1/18 INTRODUCED
1/18 REFERRED TO JUDICIARY
1/30 HEARING
2/11 COMMITTEE REPORT-BILL PASS AS AMENDED
2/13 2ND READING PASS AS AMENDED
2/15 3RD READING PASS

TRANSMITTED TO HOUSE
2/27 REFERRED TO JUDICIARY
3/22 HEARING
3/22 COMM REPORT-BILL CONCURRED AS AMENDED
3/25 2ND READING CONCURRED
3/27 3RD READING CONCURRED

RETURNED TO SENATE WITH AMENDMENTS
4/02 2ND READING AMENDMENTS CONCURRED
4/04 3RD READING AMENDMENTS CONCURRED
4/11 SIGNED BY PRESIDENT
4/11 SIGNED BY SPEAKER

4/12 TRANSMITTED TO GOVERNOR
4/16 SIGNED BY GOVERNOR
CHAPTER NUMBER 496 EFFECTIVE DATE: 10/01

SB 153 INTRODUCED BY B. BROWN
REVISE SHOWING REQUIRED FOR TEMPORARY SOLE CUSTODY

take its place. Senator Blaylock asked Karen Sedlock, the Secretary from the Sentence Review Board in attendance at the hearing, if she could tell us how many of the sentences that come before the Sentence Review Board are reduced, left the same, or raised. Ms. Sedlock stated the committee should refer to Exhibit 1 for that information. Senator Towe addressed Judge Keedy and stated he realizes some judges may make a mistake and that is human nature or maybe clouded by the emotion of the moment, but persons with similar factual circumstances have divergent sentences, and he questioned how we were to address that. Judge Keedy responded there is the potential for mistakes at any level of our criminal justice system. He believes the potential for mistake is much smaller at the trial court level than at the Sentence Review Board. He is concerned about mistakes too, but he is convinced that there is no way for the Sentence Review Board to be as thoughtful and deliberative as the sentencing judge himself. Senator Towe stated you haven't addressed how we address the errors that may creep into the system without it. Judge Keedy responded it is possible for the offender to appeal to the supreme court. He does not expect the number of appeals will be the same as the number of applications to the Sentence Review Board. In addition, the state supreme court has already promulgated sentencing review guidelines and distributed them for voluntary use. Senator Towe stated it probably makes more sense in conservation of our judicial time that we not add this additional burden to our supreme court, but if we removed the Sentence Review Board, we would have to. Senator Towe asked if it didn't make more sense to go into the Sentence Review Board and take care of some of these problems. Senator Blaylock asked if there has been any sentencing judge that appeared and was denied the right to participate. Judge Gary said not to his knowledge.

CLOSING STATEMENT: Senator Brown stated since its creation in 1967, the Sentence Review Board seems not to have had any great impact on the sentencing disparity between cases; what it seems to do is work to the advantage of the defendant.

Hearing on SB 150 was closed.

CONSIDERATION OF SB 151: Senator Brown, sponsor of the bill, stated this bill increases the time during which imposition of a sentence may be deferred when the deferral has a condition that imposes any financial obligation. What the bill does is it speaks to financial obligation instead of restitution as in the existing law.

PROPONENTS: Judge Michael Keedy, District Judge in Flathead County, spoke in support of the bill and stated the present law puts a limitation on the length of time a judge can defer the imposition of sentence in misdemeanors and felonies. In misdemeanors, the court can defer imposition up to one year. In felonies, it can be deferred as

long as three years. Last session, Senator Halligan introduced a bill that extended it one year, so misdemeanors can now be deferred for two years and felonies for four years. The rationale was to give defendants time to make installment payments. This bill simply broadens the definition of restitution. Jim Jensen, representing the Montana Magistrates Association, spoke in favor of the bill. He stated this gives judges a little more flexibility at tailoring sentences to meet the needs of the people.

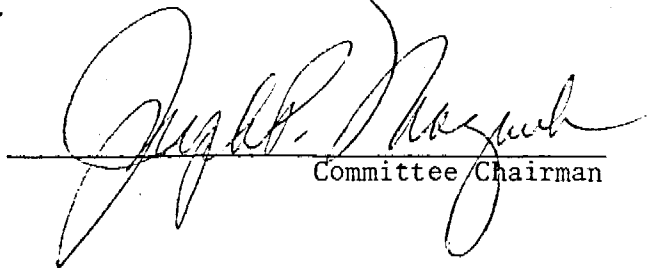
OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked Judge Keedy why he took out suspended sentences. Judge Keedy stated because we are talking about deferrals. This bill corrects an existing problem in the law. Senator Towe stated it has been his experience restitution is not imposed often enough, and he would like to see that happen more often.

CLOSING STATEMENT: None.

Hearing on SB 151 was closed.

There being no further business to come before the committee, the meeting was adjourned at 11:55 a.m.


Committee Chairman

ACTION ON SB 149: Senator Crippen moved SB 149 be recommended DO NOT PASS. Senator Brown suggested the bill be amended to include persons with the aid of counsel who plead guilty in lower court. Senator Mazurek asked how you would know he has counsel; he has a right to counsel, but he may not have it. Senator Towe stated if you plead guilty in justice court, there is no appeal. Suppose he goes in without counsel, pleads guilty, then realizes he is not guilty, and talks to counsel, and his counsel goes in to change his plea and the judge says no. Senator Pinsoneault stated if the defendant were represented by counsel at the time the guilty plea were entered, he should be considered to have waived his right. Senator Towe asked how you would challenge the constitutionality of the statute. Senator Mazurek stated he has not heard a great hue and cry that this has been abused, and so believes it is not a concept that needs to be repaired. The motion to recommend SB 149 DO NOT PASS carried with Senators Brown, Galt, and Pinsoneault voting in opposition.

TABLING OF SB 150: It was brought up that Senator Hims1 has a bill which will come before the committee on sentencing guidelines. Senator Mazurek stated that because of the problems, the county attorneys are taking a larger interest; they are appearing, and they are getting the judges to appear. Senator Crippen moved SB 150 DO NOT PASS. Senator Brown stated it is probably not a good idea to abolish the Sentence Review Board outright, but indicated Representative Gould has a bill in that the proceedings before the Sentence Review Board will be on the record. He wants to give a signal that there is no sentiment in the Senate for this. Senator Shaw moved as a substitute motion that SB 150 be TABLED. The motion carried with Senator Crippen voting in opposition.

ACTION ON SB 151: Senator Towe stated he feels we need more emphasis on restitution and financial obligation. Senator Pinsoneault moved that SB 151 be recommended DO PASS. The motion carried unanimously.

FURTHER CONSIDERATION OF SB 240: Senator Towe stated he has some amendments he would like Mr. Petesch to prepare. He will get together with Mr. Petesch to see that this is done before the committee again takes this bill up for consideration.

TABLING OF SB 179: Senator Shaw moved that SB 179 be TABLED. The motion carried with Senator Crippen voting in opposition.

FURTHER CONSIDERATION OF SB 240: Mr. Petesch stated the purpose for putting subsection 2 in the bill is that currently as part of a suspended sentence or probation, a condition imposed is the parolee must

STANDING COMMITTEE REPORT

February 4

19 35

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 151

first reading copy (white)
color

INCREASE SENTENCE DEFERRAL PERIOD IF A FINANCIAL OBLIGATION IS IMPOSED.

Respectfully report as follows: That SENATE BILL No. 151

DO PASS

~~XXXXXXXXXX~~

Chairman.

-- which would exist in relation to the marital status -- is minimal. The Human Rights Act was never intended to overrule a public policy exempting this.

There being no further questions, hearing closed on SB 230.

CONSIDERATION OF SENATE BILL NO. 151: Senator Brown, District #2, chief sponsor of this bill, testified. This is an act to increase the time during which imposition of a sentence may be deferred when the deferral has a condition that imposes any financial obligation. He said this bill broadens the bill that was introduced last session by Senator Halligan.

There being no further proponents or opponents, Senator Brown closed.

There being no questions, hearing closed on SB 151.

EXECUTIVE SESSION

ACTION ON SENATE BILL NO. 151: Rep. Addy moved that SB 151 BE CONCURRED IN. The motion was seconded by Rep. Hammond.

Rep. Mercer moved to amend on page 1, line 25 following "restitution" by striking ", as" through "(2)". The motion was seconded by Rep. Eudaily and carried unanimously.

Rep. Cobb moved that SB 151 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Eudaily and carried unanimously. Rep. Cobb will carry the bill on the floor.

ACTION ON SENATE BILL NO. 185: Rep. Cobb moved that SB 185 BE CONCURRED IN. The motion was seconded by Rep. Addy.

Rep. Eudaily moved that the title be amended on line 4 by striking "ALLOWING" and inserting "INCREASING". The motion was seconded by Rep. Hannah and carried unanimously.

Rep. Mercer made a substitute motion that SB 185 BE NOT CONCURRED IN AS AMENDED. The motion was seconded by Rep. Rapp-Svrcek. Rep. Mercer feels this bill was introduced for the benefit of banks. He doesn't agree that banks should be able to recover full attorneys' fees and trustees' fees. Rep. Hannah spoke in favor of the motion to kill the bill. He said this is a classic example of a chipping away process -- the same bill was introduced last session.

Rep. Addy said the reinstatement fees are still bound by the court's determination. They are justified by the amount of work produced, that is developed by the attorney representing the lender. He said that Rep. Gould was right to the extent that if you don't allow the lending institution to recoup their foreclosure costs, you are passing that costs along to other customers. To the extent that it isn't passed along

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/14/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)			✓
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

March 14

SS

19.....

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 151

Third reading copy (Blue)
color

INCREASE SENTENCE DEFERRAL PERIOD IF A FINANCIAL
OBLIGATION IS IMPOSED

Respectfully report as follows: That Senate Bill No. 151

be amended as follows:

1. Page 1, line 25.
Following: "restitution"
Strike: ", as" through "(2)"

AND AS AMENDED,
BE CONCURRED IN
DO PASS